

Message Text

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TO SECSTATE WASHDC IMMEDIATE 7775
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ALL OTHER CANADIAN POSTS POUCH

C O N F I D E N T I A L SECTION 01 OF 02 OTTAWA 03083

E.O. 11652: GDS
TAGS: PGOV, PINT, CA
SUBJECT: CONSTITUTIONAL AMENDMENT BILL BOUND TO BE
CONTROVERSIAL

REF: A) OTTAWA 3082 B) OTTAWA 2970 C) OTTAWA 2943

1. SUMMARY: OUR INITIAL IMPRESSION IS THAT TRUDEAU GOVERNMENT HAS LAUNCHED, THROUGH THE CONSTITUTIONAL AMENDMENT BILL, A LEGISLATIVE PACKAGE WHICH WILL CERTAINLY STIR UP CONTROVERSY FROM A WIDE VARIETY OF ELEMENTS IN THIS COUNTRY. WHATEVER ELSE THEY MAY BE, WE FIND IT HARD TO JOIN IN LEVESQUE'S DESCRIPTION OF THE PROPOSALS (IN THE WHITE PAPER) AS "PURELY COSMETIC AND PROFOUNDLY INSIGNIFICANT." IN OUR VIEW, THIS IS A MOUSE WHICH ROARS, AND WE EXPECT THAT THERE WILL BE MUCH ROARING BACK FROM ALL PARTS OF THIS COUNTRY. TRUDEAU HAS SET JULY 1, 1979 AS THE TARGET DATE FOR THE ENACTMENT BY PARLIAMENT OF THE CONSTITUTIONAL BILL, BUT THE NATURE OF THE OPPOSITION TO THE BILL AND THE RESULTS OF THE NEXT FEDERAL ELECTIONS COULD EASILY UPSET THIS TIMETABLE. END SUMMARY.

2. REACTION TO TRUDEAU GOVERNMENT'S WHITE PAPER (REFTELS)
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RANGED FROM LUKEWARM TO HOSTILE. SOME HAVE CRITICIZED THE WHITE PAPER PROPOSALS AS BEING INCONSEQUENTIAL AND AS FAILING TO GET AT HEART OF NEEDED CONSTITUTIONAL REFORM. OTHERS HAVE INDICATED THAT PHASE ONE PROPOSALS ARE TOO BASIC TO FEDERAL STRUCTURE TO BE PASSED MERELY BY FEDERAL PARLIAMENT, POSSIBLY OVER OBJECTIONS OF SOME PROVINCES. QUEBEC LIBERAL LEADER CLAUDE RYAN SEEMS TO

HAVE COME CLOSE TO ARGUING BOTH POINTS AT SAME TIME. WITH CRITICISM ALREADY WIDESPREAD ON BASIS OF VAGUE PROPOSALS IN WHITE PAPER, SUPPORTING LEGISLATION TABLED IN COMMONS TODAY (JUNE 20) IS CERTAIN TO CREATE CONTROVERSY.

3. BASED ON INITIAL REVIEW, THIS BILL STRIKES US AS A BOLD STEP BY TRUDEAU, PARTICULARLY WHEN MEASURED AGAINST FAILURE OF ANY CONSTITUTIONAL REFORM OVER PAST 50 YEARS. PROPOSED RECASTING OF SENATE, FOR EXAMPLE, IS A CONCRETE MOVE TO MODIFY AN INEFFECTUAL FORUM AND PROVIDE AT LEAST SOME PROVINCIAL INPUT IN FEDERAL PARLIAMENT. CANADIANS HAVE TALKED ABOUT DOING AWAY WITH THE SENATE FOR YEARS, AND THE GOVERNMENT HAS NOW DEMONSTRATED INTENTION TO DO SOMETHING ABOUT IT. RECASTING OF SENATE IS, MOREOVER, A DEFT POLITICAL MOVE FEDERALLY, SINCE IT PREEMPTS NEARLY ALL FEATURES OF OPPOSITION PROGRESSIVE CONSERVATIVE (PC) PROPOSAL FOR A "HOUSE OF THE PROVINCES". TORIES, CONSEQUENTLY, FACE CHOICE OF ATTACKING WHAT THEY HAVE PROPOSED OR APPEARING TO SUPPORT A MAJOR FEATURE OF GOVERNMENT'S REFORM PACKAGE.

4. SENATE PROVISIONS WILL GENERATE CONSIDERABLE CONTROVERSY. THERE HAVE ALREADY BEEN SIGNS OF STRONG DISCONTENT AMONG INCUMBENT SENATORS (INCLUDING LIBERALS), WHO ARE ASKED TO LEGISLATE THEMSELVES OUT OF THEIR JOBS. SENATE CONCEIVABLY COULD DELAY OR BLOCK THE HOUSE OF

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FEDERATION PROVISIONS, BUT SENATORS DO NOT HAVE STRONG CONSTITUENCIES AND ARE VIEWED BY MANY CANADIANS WITH MIXTURE OF AMUSEMENT AND SCORN. THUS, THERE WOULD PROBABLY BE LITTLE SYMPATHY WITH ANY EFFORTS TO PROTECT THEIR SECURITY WITH OBSTRUCTIONIST TACTICS.

5. HOUSE OF THE FEDERATION PROPOSAL HAS GENERATED SOME CONCERN AMONG STRONGLY PARTISAN LIBERALS WHO FEAR THAT, UNDER NEW GROUND RULES, UPPER HOUSE COULD PASS INTO CONTRDL OF THE OPPOSITION PC. OVER PAST SEVERAL DECADES, SENATE HAS BEEN OVERWHELMINGLY LIBERAL. EVEN THOUGH ONE-HALF OF NEW UPPER HOUSE WILL BE APPOINTED BY HOUSE OF COMMONS, CONTROL BY OPPOSITION APPEARS POSSIBLE MATHEMATICALLY, IN LIGHT OF CURRENT TORY CONTROL OF MAJORITY OF PROVINCIAL LEGISLATURES, WHICH WILL APPOINT OTHER ONE-HALF. IT REMAINS TO BE SEEN, HOWEVER, WHETHER THIS WILL BECOME A REALITY AND EXTENT TO WHICH UPPER HOUSE'S NEW POWERS, WHEN FULLY DEFINED, WILL ALLOW IT TO BE A SERIOUS COUNTER FORCE TO THE HOUSE OF COMMONS.

6. PROPOSALS FOR SUPREME COURT SHOULD ALSO STIR UP LIVELY DEBATE. EVEN BEFORE LEGISLATION WAS TABLED,

SOME COMMENTATORS HAD QUESTIONED WISDOM OF TURNING HIGHEST FEDERAL JUDICIAL BODY INTO A FORUM IN WHICH JUSTICES BECOME ADVOCATES OF THEIR RESPECTIVE PROVINCIAL INTERESTS. THIS CONCERN SHOULD BE HEIGHTENED BY PROPOSAL THAT QUEBEC JUSTICES ALONE WILL DECIDE CIVIL CODE QUESTIONS. APPARENT FRAGMENTATION OF THE SUPREME COURT MAY DISTURB MANY, BUT, IF THIS IS TO BE THE CASE, SOME ANGLOPHONES MAY ASSERT THAT NON-CIVIL CODE CASES SHOULD BE DECIDED BY OTHER JUSTICES ALONE.

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C O N F I D E N T I A L SECTION 02 OF 02 OTTAWA 03083

7. MUCH HAS ALREADY BEEN MADE OF PERCEIVED INADEQUACIES OF PROPOSED BILL OF RIGHTS. PROVINCIAL "OPTING IN" LEAVES OPEN POSSIBILITY OF DIFFERENT STANDARDS IN DIFFERENT PARTS OF COUNTRY. TRUDEAU HAS ATTEMPTED TO COUNTER THIS CRITICISM BY POINTING OUT THAT DIFFERENT STANDARDS ALREADY APPLY IN DIFFERENT PARTS OF THE COUNTRY WITH INDIVIDUAL BILLS OF RIGHTS IN THE VARIOUS PROVINCES. SOME OTHER CRITICS HAVE CLAIMED THAT THE CONSTITUTIONAL BILL OF RIGHTS MAY INFRINGE ON CERTAIN AREAS OF PROVINCIAL AUTHORITY. TRUDEAU HAS ARGUED THAT, FOR AN EFFECTIVE BILL OF RIGHTS, ALL GOVERNMENTS BOTH FEDERAL AND PROVINCIAL MAY HAVE TO GIVE UP SOME POWERS. HE HAS ALSO POINTED OUT THAT PROVINCES WILL NOT BE BOUND BY THE CONSTITUTIONAL BILL OF RIGHTS UNTIL THEY "OPT IN." PERSUASIVE AS HIS ARGUMENTS MAY BE, TRUDEAU HAS PRESUMABLY NOT TOTALLY STILLED THE CONCERNS AND CONTROVERSY SURROUNDING THIS PROPOSAL.

8. THE BILL, WHICH WAS INTRODUCED TODAY, JUNE 20, FOR

FIRST READING, WILL BE THE SUBJECT OF A MEETING OF
FEDERAL AND PROVINCIAL MINISTERS OF INTERGOVERNMENTAL
AFFAIRS IN AUGUST AND OF A MEETING OF FIRST MINISTERS IN
SEPTEMBER. TRUDEAU HAS SET JULY 1, 1979 AS THE TARGET
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DATE FOR THE APPROVAL OF THE BILL BY PARLIAMENT. THIS
TIMETABLE, AS WELL AS THE NATURE OF THE PROPOSALS
THEMSELVES, COULD BE UPSET, DEPENDING ON THE RESULTS
OF THE NEXT FEDERAL ELECTIONS, WHICH WILL BE HELD BEFORE
THAT DATE.
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